

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF OKLAHOMA**

SHIRLEY COMBS, )  
                        )  
Plaintiff,         )  
                        )  
v.                   )      No. 19-CV-63-KEW  
                        )  
CAPITAL ONE BANK (USA), N.A.,     )  
                        )  
Defendant.         )

**COMPLAINT**

NOW COMES Plaintiff, SHIRLEY COMBS (“Plaintiff”), by her attorneys, and hereby alleges the following against CAPITAL ONE BANK (USA), N.A. (“Defendant”):

**Nature of the Action**

1. Plaintiff’s Complaint arises under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, and invasion of privacy.

**Jurisdiction and Venue**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 47 U.S.C. § 227.

3. Venue is proper pursuant to 28 U.S.C. 1391(b)(1) as the conduct giving rise to this action occurred in this district, as Plaintiff resides in this district and Defendant transacts business in this district.

**Parties**

4. Plaintiff is a natural person residing in Antlers, Oklahoma.

5. Defendant is a business entity with headquarters located in McLean, Virginia.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers

Factual Allegations

7. Defendant has been placing calls to telephone number (580) 209-29XX.

8. Telephone number (580) 209-29XX has been assigned to Plaintiff's cellular telephone.

9. These telephone calls are not for emergency purposes.

10. These telephone calls were in connection with an alleged credit card debt.

11. The alleged debt arises from transactions which were used primarily for personal, family, and/or household purposes.

12. Upon information and good faith belief, and in light of the frequency, number, nature, and character of these calls, and based on Defendant's representations to Plaintiff, Defendant used an automatic telephone dialing system or artificial or prerecorded voice to call Plaintiff's cell phone.

13. On or about May 14, 2018, Plaintiff spoke with one of Defendant's employees.

14. Plaintiff instructed Defendant's employee to stop calling her cell phone.

15. Defendant continued to use an automatic telephone dialing system to call Plaintiff's cell phone after May 14, 2018.

16. Plaintiff estimates that between May 15, 2018, and December 10, 2018, Defendant called her cell phone at least 177 times.

17. Defendant did not have Plaintiff's express consent to use an automatic telephone dialing system to place these calls.

18. Plaintiff recalls hearing prerecorded messages used by Defendant when it made calls to her cell phone.

19. Defendant knew that it did not have Plaintiff's express consent to use an automatic telephone dialing system to place these calls.

20. Defendant voluntarily, knowingly, and/or willfully placed these calls.

21. Plaintiff was severely interrupted, unduly inconvenienced, and mercilessly harassed by Defendant's unauthorized phone calls.

22. As a result of Defendant's unauthorized phone calls, Plaintiff suffered emotional distress including anxiety, stress, frustration, shame, lack of sleep, lack of concentration, and fear of answering her telephone.

COUNT I  
Defendant Violated the Telephone Consumer Protection Act

23. Plaintiff repeats, reiterates and incorporates by reference into this cause of action the allegations set forth above with the same force and effect as if the same were set forth at length herein.

24. Defendant's actions alleged *supra* constitute numerous violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

25. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violates of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C). Defendant willfully used an automatic telephone dialing system to call Plaintiff's cell phone.

COUNT II  
Invasion of Privacy – Intrusion Upon Seclusion

26. Plaintiff repeats, reiterates and incorporates by reference into this cause of action the allegations set forth above with the same force and effect as if the same were set forth at length herein.

27. Plaintiff had a reasonable expectation of privacy in her solitude, seclusion, private concerns and affairs.

28. Defendant interfered, physically or otherwise, with the solitude, seclusion and private concerns of Plaintiff by repeatedly and unlawfully calling Plaintiff's cell phone without authorization after she instructed it to stop.

29. Defendant's conduct resulted in multiple intrusions and invasions of privacy, which would be highly offensive or objectionable to a reasonable person in that position.

30. Plaintiff has suffered actual damages as a direct and proximate result of Defendant's Intrusion.

Prayer for Relief

WHEREFORE, Plaintiff prays that judgment be entered against the Defendant for the following:

31. Statutory damages of \$500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);
32. Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. § (b)(3)(C);
33. Equitable relief to prevent further invasions of Plaintiff's privacy;
34. All actual, compensatory, punitive, and other damages to which Plaintiff is entitled;
35. Award reasonable attorneys' fees, litigation expenses and costs; and

36. Any other relief that this Honorable Court deems appropriate.

Respectfully submitted,

Dated: February 21, 2019

/s/ Adam T. Hill  
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